

2023 South Dakota Legislature

Senate Bill 91**AMENDMENT 91C
FOR THE SENATE JUDICIARY ENGROSSED BILL**

1 **An Act to revise certain provisions regarding the crime of rape and provide a penalty**
2 **therefor.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-22-1 be AMENDED:**

5 **22-22-1.** Rape is an act of sexual penetration accomplished with any person under
6 any of the following circumstances:

- 7 (1) If the victim is less than thirteen years of age;~~or~~
8 (2) Through the use of force, coercion, or threats of immediate and great bodily harm
9 against the victim or other persons within the victim's presence, accompanied by
10 apparent power of execution;~~or~~
11 (3) If the victim is incapable, because of physical or mental incapacity, of giving
12 consent to such act and the perpetrator knows or reasonably should know of the
13 victim's incapacity;~~or~~
14 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or
15 anesthetic agent or hypnosis and the perpetrator knows or reasonably should know
16 the victim is incapable of giving consent;~~or~~
17 ~~(5) Without the victim's consent and the perpetrator knows or reasonably should know~~
18 ~~the victim is not consenting;~~ ~~or~~ ~~If the victim is thirteen years of age, but less than~~
19 ~~sixteen years of age, and the perpetrator is at least three years older than the~~
20 ~~victim; or~~
21 ~~(5)(6) If the victim is thirteen years of age, but less than sixteen years of age, and the~~
22 ~~perpetrator is at least three years older than the victim~~ Without the victim's consent
23 and the perpetrator knows or reasonably should know the victim is not consenting.

24 A violation of subdivision (1)~~of this section~~ is rape in the first degree, which is a
25 Class C felony. A violation of subdivision (2)~~of this section~~ is rape in the second degree
26 which is a Class 1 felony. A violation of subdivision (3) or (4) ~~of this section~~ is rape in the

1 third degree, which is a Class 2 felony. A violation of subdivision (5) ~~of this section or (6)~~
2 is rape in the fourth degree, which is a Class 3 felony.

3 Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to
4 any charge brought pursuant to ~~subdivisions~~ subdivision (1) or (2) ~~of this section~~.
5 Otherwise, a charge brought pursuant to this section may be commenced at any time ~~prior~~
6 ~~to the time before~~ the victim ~~becomes of~~ reaches age twenty-five or within seven years
7 ~~of~~ from the commission of the crime, whichever is longer.